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REMARKS

This paper responds to the outstanding office action.

Claims 15-16, 18 and 20-25 stand rejected under 35 USC 103(a) as unpatentable over -
5 Goldszmidt et al., U.S. Patent No. 6,195,680, and Lumelsky et al., U.S. Patent No. 6,377,996.
Respectfully, this rejection is traversed.

The Examiner's analysis of Goldszmidt et al. in paragraph 5 of the office action is correct; this reference does not disclose "(a) creating a buffer; (b) receiving and caching in the buffer advanced portions of the media stream; (c) issuing a request to the second server to initiate
10 delivery of the media stream at a given offset; and (d) rendering the advanced portions of the media stream." Lumelsky et al. are said to provide these steps, but a close reading of the reference indicates that this is not the case.

The Lumelsky et al. patent does describe the basic function of switching a media stream source (from a primary server to a secondary server). With respect to the claim language in
15 question, the Examiner has cited two (2) separate portions of the Lumelsky et al. specification. The first portion, column 6, lines 41-59, describes the technique of "smoothing" a media stream by having the media player delay rendering to allow for the buildup of data packets in a buffer. Note, however, that this section of the text is a general background discussion of the client-streaming server interaction, but it is not a description of what happens during the stream
20 "switch" function, which function is described separately. In particular, the switch function is set forth in the second portion of the specification identified by the Examiner, namely, column 7, lines 28-59. This latter portion of the specification, however, explicitly disavows the "smoothing" technique referred to earlier:

"In the present invention, a secondary socket is used [in the client] to phase in [from a
25 second server] a stream being provided in the primary socket. Unlike the use of catch-up buffers, the present invention allows such switch to occur at any point in the streaming session (emphasis supplied)." (Column 7, lines 34-36).

In particular, this switch function is accomplished by using a synchronizer unit 380 to search for and locate current segmentation markers in the primary and secondary streams, which
30 markers are then provided to a switch decision unit 365 that determines when to make the switch. As described at column 7, lines 44-56, the switch decision unit 365 makes this determination by

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ensuring that there is “sufficient overlap” in the streams that are being received (concurrently) from the two separate servers.

The Lumelsky et al. technique is complicated and requires a synchronizer unit 380 to search and locate segmentation markers, as well as switch decision unit 365 to evaluate the degree of stream overlap. None of these functions are required in the present invention, which merely buffers “advanced portions” of the media stream currently being received (from the first server) until a given offset is received, at which point the switch to the second stream is made. In the claimed invention, there is no need to evaluate stream overlap because the decision to switch is just time-based (i.e. the switch is made when the offset is reached).

The teachings on column 6, lines 41-59 relating to “smoothing” are not implemented in Lumelsky et al. to effect stream switching; indeed, the reference itself explicitly teaches away from the approach by stating that the disclosed switching technique is “[u]nlike the use of catch-up buffers.” Stated another way, Lumelsky et al. are teaching one of ordinary skill not to use “catch-up buffers.” A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. In re Gurley, 27 F. 3d 551, 553 (Fed. Cir. 1994). This is the case here.

For this reason, one of ordinary skill in the art would not be motivated to combine the references in the manner urged by the Examiner. (This is another way of saying that the purported combination is based on a hindsight reconstruction, which is not permissible). To the contrary, Lumelsky et al. discourage one of ordinary skill in the art to use “catch-up buffers” for switching purposes, and the discussion there regarding smoothing is not a suggestion to store “advanced portions” of the media stream, rendering such portions until a given offset is reached, and then switching to a new stream source (irrespective of overlap). This claimed invention is neither disclosed nor suggested by the art of record.

Note that claim 15 has been amended to clarify that the advanced portions are from the “first server.” This was believed to be implicit in the original language. New claim 26 has been added to describe how the “advanced portions” can be created.

In summary, the prior art does not disclose or suggest the following subject matter, which as noted above is used to facilitate the stream switch:

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“(a) creating a buffer; (b) receiving from the first server and caching in the buffer advanced portions of the media stream; (c) issuing a request to the second server to initiate delivery of the media stream at a given offset; and (d) rendering the advanced portions of the media stream [until the given offset is reached, at which the switch occurs].” This is not mere stream “smoothing,” and, contrary to the Examiner’s contention, Lumelsky et al. instruct one not to use such a technique in making a stream switch.

A Notice of Allowance for claims 15-16, 18 and 20-26 is respectfully requested.

Respectfully submitted,

By:

David H. Judson, Registration No. 30,467

ATTORNEYS FOR APPLICANT